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Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

ELLIOUT LEE EASLEY,

Defendant and Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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The petitioner, Elliout Lee Easley, prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of the State of California rendered in these proceedings on May 10, 1979.

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District,

is reported and appears at Appendix A, infra. The opinion of the Supreme Court of the State of California, is unreported and appears at Appendix B, infra. This opinion consists of a denial of hearing.

JURISDICTION

The order of the State of California Supreme Court was entered on May 10, 1979. See Appendix B, infra. This petition for certiorari is filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

Petitioner's place of business was searched and stolen articles were found. Under California law there are two statutes which authorize law enforcement officers to search the premises maintained by a person who has a dismantler's license. California Vehicle Code Section 320 provides for inspection of the premises and pertinent records. California Vehicle Code Section 2805 provides for a search of the premises in order to establish rightful ownership of vehicles; but California case law has required law enforcement to obtain a warrant absent emergency circumstances. In the present case a Deputy Sheriff found an abandoned vehicle; ran the plates and found it to be sold to a dismantler.

The Deputy Sheriff went to the dismantler's business address, saw a telephone number which matched a repair shop across the street. He searched the later premises and located stolen vehicles. The trial court and Court of Appeal found Vehicle Code Section 320 applicable and not Section 2805. The questions presented here relate to petitioner's Fourth Amendment rights. These questions are:

1. Where a state provides specific legislation directing law enforcement to search premises to ascertain legal or rightful ownership of motor vehicles and the case law eminating from that section requires law enforcement to obtain a search warrant absent exigent circumstances, can the State circumvent Fourth Amendment guarantees by relying on another statute which does not state as its purpose, the purpose of determining rightful ownership of a vehicle.

2. Is Section 320 of the California Vehicle Code constitutional in that it dispenses with the Fourth Amendment prohibition of unjustified warrantless searches without having important crime presentation considerations or other significant justifications sufficient to outweigh an individual's right to privacy.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Constitutional Amendment No. IV

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmative and particularly describing the place to be searched and the person or ther things to be seized."

2. California Vehicle Code Section 320(b)

"(b) An automobile dismantler where the books and records pertinent to the type of business conducted are kept. The place of business shall have an office and a dismantling area located in a zone properly zoned for that purpose by the city, county, or city and county. . . .

"A licensee issued an occupational license by the department and conducting more than one type of business from an establishment, as herein defined, shall provide a clear physical division between the types of business involving

vehicles of their component parts. The place of business shall be open to inspection of the premises, pertinent records and vehicles by any peace officer during business hours."

3. California Vehicle Code Section 2805(a)

"For the purpose of locating stolen vehicles, a member of the California Highway Patrol may inspect any vehicle of a type required to be registered under this code on a highway or in any public garage, repair shop, parking lot, new or used car lot, automobiles dismantler's lot . . . and may inspect the title or negotiation of vehicles, in order to establish the rightful ownership or possession of the vehicle."

STATEMENT OF FACTS

On December 7, 1977, Deputy Sheriff Jack Boggio learned that a 1977 Cadillac parked on the street had been sold or salvaged to BFC Auto Dismantling. Boggio went to that address and found a lot surrounded by a block wall, which had two telephone numbers painted on it. Boggio axcertained that one of the telephone numbers matched an address across the street which looked like an auto repair shop.

Boggio went to the repair shop and asked petitioner if the 1977 Cadillac belonged to BFC. Petitioner produced a dismantler's book, but the 1977 Cadillac was not entered in the book.

Without any stated reason, the officer searched the premises and located a stolen vehicle. The trial Court denied petitioner's motion to suppress the evidence pursuant to Penal Code Section 1538.5, which prohibits warrantless searches without probable cause.

The Court of Appeal concluded that the warrantless search did not violate the Fourth Amendment because the Department of Motor Vehicles had the right to make such searches to segregate the honest businessman from the thief.

Petitioner then petitioned the Supreme Court for hearing, but said hearing was denied, without written opinion.

FEDERAL QUESTION RAISED AND PASSED ON

Trial counsel objected to the introduction of any evidence seized as a result of the warrantless search of petitioner's premises, based upon petitioner's Fourth Amendment rights. The motion was denied.

On appeal, petitioner claimed that the warrantless inspection of vehicles at his premises was an unreasonable search violative of the Fourth Amendment. The Court of Appeal held that Vehicle Code Section 320 lawfully authorized warrantless searches and that search was within Section 320: At no time prior th the Court of Appeal opinion was it contended that Section 320 was applicable to this case.

Petitioner alleged in his Petition for Hearing to the State Supreme Court that Section 320 was inapplicable to this case; that there was no probable cause to conduct the search and as such, the search and seizure violated the Fourth Amendment.

REASONS FOR GRANTING THE WRIT

1. The Court Below Has Decided a Federal Question Of Substance In a Way Which Is In Contradiction Of the Applicable State Law On Search and Seizure.

The searching officer had no report of a stolen vehicle and articulated no suspicious activity warranting further investigation of the abandoned 1977 Cadillac. The officer never stated that he was searching pursuant to said section. The trial Court merely ruled that there was probable cause to search.

There is only one reported case interpreting Section 320 of the Vehicle Code; Addison v. Department of Motor Vehicles (1977) 69 Cal. App. 3d 486, 138 Cal. Rptr. 185. This case holds:

> "While DMV has cited examples where the power to inspect any and all business records of a dealer would serve some useful purpose, it has not shown that such inspection power is indispensable to the enforcement of the Vehicle Code. Accordingly, this court should not find that the DMV has unrestricted powers to inspect business records by way of implication."

The Court of Appeal thus erred when it held that this statute authorizes search of premises for stolen vehicles, citing United States v. Biswell, 406 U.S. at p. 316, Colonnade Catering Corp. v. United States (1970) 397 U.S. 72, 76 and Marshall v. Barlow's, Inc. (1978) 436 U.S. 307.

In each of the cases cited by the Court of Appeal, the courts found that there was an overriding public need which excused non-compliance with obtaining a warrant upon probable cause. However, in Addison v. Department of Motor Vehicles, supra, the California court's have declared this section to be of limited law enforcement value.

This is especially true when Section 320 is viewed with Section 2805, which specifically directs

law enforcement to inspect to ascertain legal ownership. However, California decisional law requires that searches conducted without warrant, pursuant to Vehicle Code Section 2805, must be supported by probable cause. (See: Jackson v. Superior Court Kern County (1977) 142 Cal. Rptr. 299, 74 Cal. App. 3d 361 and United States v. Solomon (CA 1975) 528 F. 2d 88).

In this case there was no probable cause in that the officer admits that the abandoned car checked out to be legally transferred to petitioner's business.

2. The Court Below Has Decided a Federal Question Of Substance In a Way Not In Accord With the Applicable Decisions Of This Court.

This Court has upheld statutes authorizing a search without a warrant where there is a great importance of that type of enforcement to prvent crime. (United States v. Biswell, 406 U.S. at p. 316, Marshall v. Barlow's, Inc. (1978) 436 U.S. 307.

However, in the present case, the inspection of the premises has little enforcement value to effect the purposes of Section 306. (See: Addison v. Department of Motor Vehicles (1977) 69 Cal. App. 3d 486, 138 Cal. Rptr. 185.

Section 2805 is the applicable enforcement section and California has specifically required probable cause with respect to searches and seizures made pursuant to this section. Therefore, the search of petitioner's premises was conducted in violation of the Fourth Amendment and in contradiction with the applicable State and federal law.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

GLADYS TOWLES ROOT

Attorney for Petitioner

APPENDIX "A"

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	2nd Crim. No. 32740
	)	(Super. Ct. No.
Plaintiff and Respondent,	)	A443838)
v.	)	Ct. of App. - Second Dist.
ELLIOUT LEE EASLEY,	)	F I L E D
	)	Mar 14 1979
Defendant and Appellant.	)	Clay Robbins, Jr. Clerk
	)	Deputy Clerk

A four count information charged defendant with grand theft auto (Pen. Code §487(3)), unlawful taking of an automobile (Veh. Code §10851), receiving stolen property (Pen. Code §496), and willful injury to insured property with intent to defaud (Pen. Code §548). It was stipulated that a motion to suppress evidence pursuant to Penal Code section 1538.5 would be submitted on the evidence presented at the preliminary hearing. After the motion was denied, defendant pleaded guilty to the receiving count. On motion of the People the other counts were dismissed in the interests of justice. Defendant was placed on probation for a three year period on various conditions, including that he spend the first

sixty days in county jail and pay a fine of $500. Plaintiff appeals from the judgment. (Pen. Code §1538.5 (m).)

FACTS

On December 7, 1977, Deputy Sheriff Jack Boggio learned that a 1977 Cadillac parked on 66th Street had been sold for salvage as a wrecked car. A check with the Department of Motor Vehicles revealed that the car had been sold to BFC Auto Dismantling at 10919 South Central Avenue, Los Angeles, Boggio went to that address and found a lot surrounded by a block wall. The "shells" of three automobiles were on the lot and two telephone numbers were painted on the wall. Boggio determined that one of the telephone numbers was listed to defendant at 10826 South Central Avenue -- the location immediately across the street from the lot.

Boggio went to that location, which appeared to be a former gas station which had been converted into an auto repair shop. Defendant was in the shop working on a 1977 Cadillac Seville. Boggio asked defendant about the 1977 Cadillac that belonged to BFC Auto Dismantlers and defendant replied that the car was one of five salvaged Cadillacs he had purchased and that his wife was currently driving it. Defendant then produced a dismantler's "acquisition book" 1/

1/ The full title of the book was "Dismantler's Book of Notice of Acquisition and Report of Vehicle to be Dismantled or Wrecked." Deputy Boggio testified that when a dismantler acquires a vehicle he must enter it into the book and within five days must send a carbon copy of the entry to the Department of Motor Vehicles. (Veh. Code §11520.)

from the rear seat of the Cadillac he was working on. Boggio asked if that particular car had been entered into the book. Defendant said that he had had the car for about a week but had only received the "paperwork" on it the day before and had not yet made the entry.

Boggio then proceeded to inspect the other vehicles in the shop to see if they had been entered in the book. He discovered a 1976 Cadillac Seville which had been "all cut up, the rear clip of the body and engine and transmission with the numbers ground out of it." Inside a 1969 Ford van, Boggio discovered a number of Cadillac parts, including seats from a 1976 Cadillac Seville which had been stolen on November 28, 1977. Boggio also found two Bui ck Skyhawks, one of which had been dismantled. Defendant told Boggio that the dismantled Buick was his car but that its engine had blown up. 2/

DISCUSSION

Defendant claims that the warrantless inspection of the vehicles in his shop was an unreasonable search violative of the Fourth Amendment of the federal Constitution. The People counter with the claim that the inspection was authorized by statute and falls within the

2/ The dismantled Buick was relevant to count 4, which charged defendant with willfully injuring insured property with intent to defraud the insurer. (Pen. Code § 548.)

exception to the warrant requirement recognized where the premises inspected house a "pervasively regulated business. . . ." (United States v. Biswell (1972) 406 U.S. 311, 316.) We conclude that the People's position is correct.

Vehicle Code section 320 provides, in relevant part: "'Established place of business' is a place actually occupied either continuously or at regular periods by:

". . . .

"(b) An automobile dismantler where the books and records pertinent to the type of business being conducted are kept. The place of business shall have an office and a dismantling area located in a zone properly zoned for that purpose by the city, county, or city and county. . . .

"A licensee issued an occupational license by the department and conducting more than one type of business from an establishment, as herein defined, shall provide a clear physical division between the types of business involving vehicles or their component parts. The place of business shall be open to inspection of the premises, pertinent records, and vehicles by any peace officer during business hours." The inspection provisions in the last sentence of section 320 have been held to be applicable only "if there is more than one type of business at the establishment . . . ." (Addison v. Department of Motor Vehicles (1977) 69 Cal. App. 3d 486, 496.)

The evidence presented below reasonably supports the conclusion that there were two types of businesses "involving vehicles or their component parts" being conducted on the premises inspected by Deputy Boggio: an auto repair business and a dismantling business. Initially, when Boggio went to the registered address of BFC Auto Dismantlers, he found only a lot with three auto shells on it. The telephone number at that location directed him to the business across the street, which he described as appearing to be an auto repair shop. Indeed, when he entered the shop he discovered defendant working on a Cadillac which he was "restoring." However, when questioned, defendant represented himself as a dismantler who had bought five Cadillacs for purposes of dismantling. He then produced the dismantler's acquisition book from the car he was working on and indicated that that car was one he had obtained for purposes of dismantling. Under all the circumstances, Boggio could reasonably have concluded that defendant was carrying on both a dismantling business and an auto repair business at the same location and that the inspection of the vehicles in the premises was therefore authorized by Vehicle Code section 320(b).

Nevertheless, defendant argues that the search was invalid because it was not based on probable cause. For this proposition, he relies primarily on People v. Franklin (1968) 261 Cal. App. 2d 703. Franklin is inapposite. There we were concerned with the scope of authority of Vehicle Code section 2805, which specifically authorizes members of the California Highway Patrol to inspect vehicles for proper registration. We construed the language of that statute strictly

and determined that it did not authorize investigative searches for registration by police officers and deputy sheriffs generally. (Id., at p. 707; but see People v. Brown (1970) 4 Cal.App.3d 382, 387, in which the court approved a search for vehicle registration by police officers pursuant to section 2805.) In the present case, however, the investigative search was authorized by section 320(b), which allows "inspection . . . by any peace officer. . . ." The statute does not contemplate the necessity for probable cause to believe that evidence of a crime is present as a prerequisite to such inspection. (Cf. Camara v. Municipal Court (1967) 387 U.S. 523, 538-539.)

Finally, defendant claims that the sheriff was required to procure a warrant by the recent decision of Marshall v. Barlow's, Inc. (1978) 436 U.S. 307. In Marshall, the Supreme Court invalidated as violative of the Fourth Amendment a section of the federal Occupational Safety and Health Act of 1970 which empowered agents of the Secretary of Labor to inspect the facilities of businesses engaged in interstate commerce in order to uncover safety and health hazards. However, the court at the same time reaffirmed earlier cases which had recognized an exception to the warrant requirement for "pervasively regulated business[es]" such as the firearms industry (United States v. Biswell, supra, 406 U.S. at p. 316) and the liquor industry (Colonnade Catering Corp. v. United States (1970) 397 U.S. 72, 76). (Marshall v. Barlow's, Inc., supra, at p. 313.)

The business involved here clearly falls within the exception carved out in Biswell and Colonnade. As the court stated in People v. Gray (1972) 23 Cal.App.3d 456, 461, ". . . it is a matter of which we may take judicial knowledge that, while most establishments engaged in repairing vehicles, dismantling vehicles or selling used vehicles are honestly conducted, that kind of business is frequently utilized as a 'front' by persons engaged in the very kind of illegal business herein involved. Examination of the Vehicle Code discloses elaborate provisions for the registration and licensing of such businesses, designed to segregate the honest businessman from the thief and the fence[5]. . . . [Therefore,] we are inclined to hold that a state may impose on the licensing of a business, so fraught with public danger, a requirement that its premises be opened to orderly inspections. [Fn. 6 omitted.]"

We conclude that the warrantless search did not violate the Fourth Amendment and that the motion to suppress was therefore properly denied.

The judgment ov conviction (order granting probation) is affirmed.

CERTIFIED FOR PUBLICATION.

/s/ Kaus
KAUS, P.J.

"5/ Consult, inter alia: Vehicle Code, sections 10650 et seq., 11500 et seq., 11701."

We concur:

/s/ Stephens
STEPHENS, J.

/s/ Ashby
ASHBY, J.

Charles S. Litwin, Judge

Superior Court of Los Angeles County.

Walter L. Gordon III, for Defendant and Appellant.

Evelle J. Younger and George Deukmejian, Attorneys General; Jack R. Winkler, Chief Assistant Attorney General -- Criminal Division; S. Clark Moore, Assistant Attorney General; James H. Kathleen M. Crain, Deputy Attorneys General, for Plaintiff and Respondent.

APPENDIX "B"

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

Dec. 1 '70

I have this day filed Order

In re: 2 Crim *No.* 32740

People

vs.

Easley

Respectfully,

G. E. BISHEL
Clerk

65953-977 11-70 4M OSP